Supreme Court, U.S.
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In The

Supreme Court of the United States

CHADWICK STERLING MCGUIRE,

Petitioner,

versus

ENSCO INCORPORATED and
ENSCO MARINE COMPANY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the decision of the United States Court of Appeals for the Fifth Circuit, reversing and rendering the decision of the United States District Court for the Southern District of Texas, which found in favor of Petitioner Chadwick Sterling McGuire, a Jones Act seaman, is erroneous for one or more of the following reasons:

   A. There is no showing in the record in this matter that the decision of the district court judge with regard to liability was clearly erroneous; thus, it was improper to reverse.

   B. The United States Court of Appeals for the Fifth Circuit panel majority improperly substituted its determination of the credibility of witnesses for that of the district court judge, thereby improperly substituting its factual findings for that of the district court.

   C. The decision of the United States Court of Appeals for the Fifth Circuit effectively denies Petitioner his right to maintenance and cure, which is an independent cause of action that is not based upon either a finding of negligence or unseaworthiness of the vessel, which is clearly erroneous.

LISTING OF ALL PARTIES TO THIS PROCEEDING

The parties to these proceedings below were:

Petitioner Chadwick Sterling McGuire

Respondents Ensco Incorporated and Ensco Marine Company

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PETITION FOR WRIT OF CERTIORARI

Chadwick Sterling McGuire respectfully petitions for a writ of certiorari for the following:

CITATIONS TO OPINION BELOW

The 2-1 opinion from the United States Court of Appeals for the Fifth Circuit reversing and rendering the decision of the United States District Court for the Southern District of Texas is not reported, but a copy of the opinion from the United States Court of Appeals for the Fifth Circuit is reproduced herein in Appendix A and the Findings of Fact and Conclusions of Law of the United States District Court for the Southern District of Texas are reproduced herein in Appendix C.

The judgment from the United States District Court for the Southern District of Texas is not reported, but a copy of the Final Judgment from the United States District Court for the Southern District of Texas is reproduced herein in Appendix B.

The *En Banc* ruling from the United States Court of Appeals for the Fifth Circuit is not reported, but a copy of the ruling from the United States Court of Appeals for the Fifth Circuit *En Banc* is reproduced herein in Appendix D.

JURISDICTION

The ruling of the United States Court of Appeals for the Fifth Circuit *En Banc* was entered on July 20, 2002

(Appendix D). The jurisdiction of this Court is invoked under 28 U.S.C. §1291 and under 28 U.S.C. §2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Jones Act, 46 U.S.C. §688, *et seq.*, is involved with respect to the negligence aspects involved in Petitioner's case. In addition, the general maritime law of the United States is involved insofar as concerns Petitioner's claims for unseaworthiness and maintenance and cure.

STATEMENT OF THE CASE

The evidence produced at trial conclusively proved that Petitioner, a seaman, was injured on November 1, 1998 by a series of negligent acts of the crew of the M/V ENSCO ATLAS, a vessel owned and operated by Respondents, and due to the unseaworthiness of said vessel as described herein. Failure to have chafing gear aboard the vessel, as is the normal procedure, forced the engineer to let out and take in sections of the main tow cable to avoid unnecessary wear in any one spot on the cable. In performing this act, the engineer carelessly and negligently used the wrong lever, resulting in the entire main tow cable being lost overboard and the barge under tow being abruptly disconnected from the vessel. Loss of the main tow cable created a dire emergency and set into motion a chain of events which culminated in Petitioner's injury.

First, an attempt was made to retrieve the towing hawser by using the winch on the barge to which the hawser was still connected; unfortunately, no one on the

vessel had a key to the barge control room, thus rendering the winch onboard the barge useless. Due to this negligence, the crew was unable to retrieve the main tow cable and the Captain of the M/V ENSCO ATLAS ordered the crew to attach the emergency tow cable. Petitioner was assigned this task and ordered to carry it out in rough weather with waves washing over the deck while the crew was attempting to move heavy, rain soaked lines with metal J-hooks across the wet, slippery deck. Due to the fact that the barge under tow had been lost, this operation became a fast paced, urgent assignment. In attempting to carry out the orders of the Captain, Petitioner fell and hurt his back.

The evidence showed, and the district court found, that a continuous chain of negligent acts committed by Respondents' crew brought about Petitioner's harm and was the legal cause thereof. (Appendix C). Among these findings was the finding that Petitioner was injured while using a "heavy line." The district court also found that because of a lack of non-skid paint on the rear deck, the vessel was unseaworthy, and that this unseaworthy condition was a proximate cause of the loss. (Appendix C).

Respondents challenged the findings of the district court on appeal by: 1) contending that the *only* heavy line aboard the vessel was a "shock line" and 2) suggesting that the district court ruled out the "shock line" as the line which Petitioner was handling at the time of his accident; therefore, the accident could not have happened the way Petitioner claimed it had. The district court found that there were aboard the vessel a number of heavy lines Petitioner may have been using to set the emergency tow cable in place.

There was ample evidence in the record to support the district court's finding that Petitioner was moving a heavy line when he was hurt and that his injury was a direct result of the negligence and carelessness of the Jones Act employer. Further, there was undisputed evidence that there was a lack of non-skid paint on the deck of the M/V ENSCO ATLAS and that this created an unseaworthy condition which caused or contributed to Petitioner's accident. The record provided abundant support for the findings of the district court and under the applicable clearly erroneous standard of review, there was no basis for a reversal and rendering of the judgment by the Court of Appeals.

On appeal, a three-judge panel of the United States Court of Appeals for the Firth Circuit, in a 2-1 decision, reversed and rendered the district court's decision (Appendix A). Contrary to the claims of Petitioner and the evidence contained in the record, the panel found that the accident could not have happened in the way described by the Petitioner because there was no evidence that a "shock line" had been utilized during the connection of the emergency tow line. Further, the panel disregarded the clear evidence contained in the record which showed that two of the crew members testified that a shock line was in fact used in the operation in question and that the connection of the emergency tow cable resulted from a chain of negligent acts which set in motion the necessity for having to connect the emergency tow cable at sea during hazardous weather.

In addition to the panel's clear disregard for the evidence contained in the record with regard to negligence and unseaworthiness, the panel also clearly erred in reversing and rendering the decision of the district court

with regard to the award for Petitioner's maintenance and cure. While the panel found that Petitioner was in fact injured during the course of the operation of connecting the emergency tow cable (Appendix A, p. 1, No. 1), they failed to affirm the district court's ruling with regard to maintenance and cure, an obligation owed by the Respondents without regard to negligence-based liability concepts. In short, if the panel agreed that Petitioner was injured while in the service of the vessel, it was clearly erroneous for it to reverse and render on the issue of the award for Petitioner's maintenance and cure. The amounts in question totaled $49,524.92 for past medical expenses (Appendix C – Findings of Fact, No. 34(i)) and $9,200.00 for past maintenance (Appendix C – Findings of Fact, No. 34(k)).

REASONS FOR GRANTING THE PETITION

The district court found that (a) the failure to honor the Captain's request for chafing gear was negligent, and (b) that the negligence stood in a proximate causal relation to the accident.

In the words of the district court:

> "If chafing gear had been made available, it would have been used instead of having to play the towing cable in and out. Had chafing gear been used on the vessel, there would have been no need to adjust the cable length. Without the use of chafing gear, the engineer was forced to pick up and let out 2'-4' of the 2500' tow cable from time to time to reduce wear on the cable. Failure to have such gear onboard constituted

> negligence. Such negligence proximately led to plaintiff's injuries."
>
> (Appendix C – Findings of Fact, No. 6)

Under the Jones Act, 46 U.S.C. §688, *et seq.*, if an employer's negligent act causes a plaintiff's injury in whole or in part, the employer is liable. *Gautreaux v. Scurlock Marine, Inc.*, 107 F.3d 331 (5th Cir. 1997). It is undeniable that the failure to have the chafing gear was a legal cause of Petitioner's loss under *Gautreaux*. It is the first cause which set in motion an unbroken chain of events leading directly to the accident itself. In the words of the district court, the failure to furnish the chafing gear represented the "first in a series of acts of negligence that culminated in plaintiff's injury. . . ." (Appendix C – Findings of Fact, No. 6). That finding is plainly borne out by the record, and justified the conclusion that the chafing gear omission was a legal cause of Petitioner's harm.

It was also undisputed that the vessel's engineer negligently grabbed the wrong lever and allowed the entire 2500' length of steel main tow cable to spool overboard. It was this act which made it necessary (once the barge's winch was discovered to be unuseable) to attach the emergency tow cable. While performing this task in dangerous waters, Petitioner was injured. The district court properly found that the engineer's negligence was a legal cause of Petitioner's injuries. (Appendix C – Findings of Fact, No. 7).

The district court added:

> "Due to the loss of the barge and the towing cable, Captain Saunders ordered every able-bodied seaman on deck to assist in retrieving the barge."
>
> (Appendix C – Findings of Fact, No. 8)

When the tow cable was lost, the crew of the M/V ENSCO ATLAS sought to retrieve it by means of the winch aboard the barge. Unfortunately, no one had the foresight to secure possession of the key to the control room. Consequently, the winch of the barge could not be used. There was, therefore, no choice but to use the "emergency tow cable." Although the district court did not declare that the failure to have the key was a specific proximate cause of Petitioner's harm, an entire section of the Findings of Fact (Appendix C – No. 11) is devoted to this omission. The district court noted: "the attempt to use the winch in the barge's control room was futile because the control room was locked and no one with the M/V ENSCO ATLAS had a key." Setting Section 11 of the Findings of Fact of the district court in context makes it clear that the failure to have this control room key was, in the opinion of the district court, yet another proximate, legal cause of Petitioner's accident.

In Section 6 of the Findings of Fact, the district court observed that there was a "series of acts of negligence" that "culminated" in Petitioner's injuries on the rear deck of the vessel. What follows in the Findings of Fact is then a detailed description of those causative factors, of which the failure to have the control room key is one. It, too, is a proximate cause of the subject accident. Even if the failure to have the key was not the proximate cause of the accident, under the Jones Act, negligence is a *legal cause* of injury if it played any part, no matter how small, in bringing about the injury. *Smith v. Trans-World,* 772 F.2d 157 (5th Cir. 1985). It follows that all of the acts of negligence described herein were legal causes of Petitioner's harm and entailed a finding of Jones Act liability on the part of Respondents.

Prior to acting to reconnect the M/V ENSCO ATLAS to the barge, a full Job Safety Analysis meeting, recorded in a log, was supposed to be conducted to review the various options and their risks. The meeting, which was actually held by Capt. Saunders, was not a full-scale JSA, and was not properly logged. Capt. Saunders admitted that the failure to conduct the JSA meeting was his fault.

The district court commented:

> "Captain Saunders failed to log the meeting he alleges was a JSA prior to commencing the emergency tow cable operation. Rather than a JSA meeting, the gathering in the wheelhouse on November 1, 1998 was a brief, impromptu gathering of the crew getting orders from Captain Saunders of the action he wanted the crew to take. Failure to have a valid JSA constituted negligence, which proximately caused plaintiff's injuries."

(Appendix C – Findings of Fact, No. 9)

Had this JSA meeting been held and the JSA rules followed, the air tugger would have been used to set up the lines necessary to connect the emergency tow cable. That would have spared the crew from the dangerous maneuver of dragging the lines by hand with J-hooks. This omission constitutes a legal cause of Petitioner's harm under *Smith v. Trans-World, supra.*

During the connection of the emergency tow cable, it began to rain. Seawater constantly washed over the deck of the vessel making all operations difficult and hazardous. It was, as the district court noted in paragraph 15 of its Findings of Fact, an "urgent, hurry up operation." The barge was floating loose and had to be reattached to the

vessel immediately. Crew members rushed about as standard procedures were blatantly ignored. The deck crew struggled to position the emergency tow cable on the stern of the vessel and shackle it to the winch cable and the cable in the shark jaws. J-hooks were used to manually drag lines and shackles across the treacherous deck. Unfortunately, the back deck lacked non-skid paint in critical areas. As a direct result, as he was pulling cable with the J-hook, Petitioner slipped and injured his back.

The district court found:

> "The back deck of the vessel was wet and slippery while plaintiff and others hurried on deck to try and rig the emergency tow cable. The wooden portion of the back deck had no nonskid paint on it. During the voyage, the movement of the main tow cable had rubbed off areas of the nonskid paint on the metal surface of this deck. This constituted an unseaworthy condition which proximately caused plaintiff's injuries."
>
> (Appendix C – Findings of Fact, No. 12)

By plain implication, allowing the non-skid paint to wear off was negligence which formed another link in the chain of events which led to Petitioner's accident.

At the time of Petitioner's accident, the M/V ENSCO ATLAS was unseaworthy for two fundamental reasons. First, as found by the district court, the absence of non-skid paint rendered the vessel unseaworthy. Where absence of non-skid paint causes harm to a crew member, the vessel may be deemed unseaworthy, that is not reasonably fit for its intended purpose. *Courville v. Cardinal Wireline Specialists, Inc.*, 775 F.Supp. 929 (W.D. La. 1991). Second, the series of negligent acts and omissions set forth above

also made the vessel unseaworthy. Congeries of negligent acts that continue over a period of time so that they affect the status of a vessel adversely may render it unseaworthy so that an individual act of negligence within or after the congeries might give rise to liability under the unseaworthiness doctrine. *Robinson v. Showa K.K.*, 45 F.2d 688 (5th Cir. 1971).

Where a chain of events extends over time, it may evolve into a condition sufficiently defective to render the vessel unseaworthy. *Calvin Crane v. Diamond Offshore Drilling*, 743 So.2d 780 (La. App. 5th Cir. 1999). The district court's Findings of Fact and Conclusions of Law establish *both* bases of unseaworthiness as the proximate cause of Petitioner's harm and recognize the chain of events that culminated in rendering the M/V ENSCO ATLAS unseaworthy.

Proximate causation means that unseaworthiness played a substantial part in actually causing the injury and that the injury was either a direct result or a reasonably probable consequence of the unseaworthiness. *Smith v. Trans-World, supra.*

The district court itemized all of the negligent acts and omissions which formed the series which collectively rendered the vessel unseaworthy and produced Petitioner's harm. Secondly, the district court singled out, in particular, the absence of non-skid paint which, in and of itself, was an unseaworthy condition responsible for Petitioner's accident.

It does not matter whether Petitioner was pulling the "shock line", a shackle or anything at all if, in fact, he slipped and fell while connecting the emergency tow cable because of the unseaworthy condition of lack of non-skid

paint. Respondent failed to challenge this finding of the district court, on the basis of which alone the judgment in Petitioner's favor should have been affirmed. The specific identity of any "line" Petitioner may have been moving is irrelevant. Petitioner fell, at least in part, during emergency operations in the rain due to the vessel's deck being inordinately slippery. It is elementary that non-skid paint would have prevented this from happening. Because the judgment in Petitioner's favor was independent of the sole issue raised by Respondent on appeal as to which line he was moving at the moment he fell, the appellate court had no grounds for reversal.

Petitioner alleged in his original complaint that he was injured "while attempting to connect the emergency tow cable." (Appendix E, App. 34). No *specific* adjoining line was alleged to have been involved. The November 2, 1998 accident report also states that Petitioner was injured "while connecting the emergency tow cable." (Appendix F). At trial, Petitioner testified that in the process of connecting the emergency tow cable, he was pulling on a "shock line," slipped on the wet deck, and hurt his back. Clearly, this was a witnessed accident which occurred during this operation. The accident report shows that Petitioner was injured and the Fifth Circuit clearly agreed with this finding.

Respondents' entire appeal was confined to this single aspect of Petitioner's testimony concerning the "shock line," a semantical argument at best. The district court found that Petitioner was injured while moving a *heavy line* across the deck of the M/V ENSCO ATLAS. (Appendix C – Findings of Fact, Sections 13-16) Respondents challenged the finding of the district court by (1) contending that the *only* heavy line aboard the vessel was a "shock

line," and (2) suggesting that the district court ruled out the "shock line" as the line Petitioner was handling at the time of his accident. Respondents inferred on the basis of these two premises that the accident did not happen as Petitioner testified. Neither of Respondents' premises was correct, and the conclusion does not logically follow.

Respondents argued on appeal that "no other heavy line was involved in the procedure." But the fact is that there *were* other lines involved. Seamen are not precise in their use of terms. "Line" and "cable" are often used interchangeably.[1]

The district court nowhere stated that Petitioner was not working with a heavy line which could *function* as a "shock line" when placed into that position. On the contrary, the district court merely said of the "shock line" (Appendix C – fn.1 of the Findings of Fact) that it agreed that "no shock line was *rigged* on the vessel" (*Emphasis ours*), but that ". . . Plaintiff was pulling on *a* line and was injured while doing so." This clearly did not rule out

---

[1] The lines and cables in use aboard the M/V ENSCO ATLAS during the procedures under consideration were many, and were subject to a multitude of names. In the record are the following references: shock line, chain hawser, hawser line, tugger cable, tugger wire, pintle line, winch line, winch cable, chain, shackle, etc. The Fifth Circuit's opinion does nothing to distinguish these terms or to show that simply by assuming that Petitioner was not engaged in moving a "shock line" at the time of his accident, he was not, in fact, hauling some kind of extended connector as claimed. Standard reference works in the field, *e.g.*, *Shiphandling with Tugs*, by George H. Reid, Cornell Maritime Press, 1986, Ch. 6, p. 54, make plain that lines and cables are interchangeable terms in a maritime context.

Petitioner's having been involved with the "shock line" at the moment of injury. After all, a "shock line" is only a heavy nylon line. Both Petitioner and Kenneth Jones testified that the line Petitioner was handling was, in fact, the "shock line," which is by definition a heavy line. (Appendix C – Findings of Fact, No. 16). Therefore, there was an adequate basis in the evidence for the trial judge's conclusion that Petitioner was indeed moving a heavy line at the time of his injury, and this heavy line may in fact have been the "shock line."

In reviewing a trial court's determination, an appellate court is bound by the standard of Fed.R.Civ.P. 52(a): "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." This limited review recognizes **"the unique opportunity afforded the trial court judge to evaluate the credibility of witnesses and to weigh the evidence." (Emphasis added).** *Inwood Laboratories v. Ives Laboratories,* 456 U.S. 844, 102 S.Ct. 2182, 2189, 72 L.Ed.2d 606 (1982). **"Unless the appellate court is left with the 'definite and firm conviction that a mistake has been committed' it must accept the trial court's findings."** (Emphasis added). *Id.*

An appellate court is not free to re-weigh the evidence or to re-evaluate credibility of witnesses or to substitute for the district court's reasonable factual inferences from the evidence other inferences that the reviewing court may regard as more reasonable. *Pullman-Standard v. Swint,* 456 U.S. 273, 284, 102 S.Ct. 1781, 1788, 72 L.Ed.2d 66 (1982). "The burden of showing that the findings of the district court are clearly erroneous is heavier if the credibility of witnesses is a factor in the trial court's decision."

Dunbar Medical Sys., Inc. v. Gammex, Inc., 216 F.3d 441, 2000 WL 797247 (5th Cir. 2000).

Under the applicable standard of review, it was necessary for the appellate court to find that the district court was "clearly erroneous" in finding that Petitioner injured himself while pulling on a heavy line. "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City,* 470 U.S. 573 (1985), quoting *United States v. United States Gypsum Co.,* 333 U.S. 364, 395 (1948). **The appellate court may not reverse the findings of the district court merely because it is convinced that it would have decided the case differently.** (Emphasis added). *Anderson*, 470 U.S. at 473. **It oversteps its duty under Fed.R.Civ.P. 52(a) if it undertakes to duplicate the role of the lower court.** (Emphasis added). *Id.*

The appellate court may not reverse the district court when the district court's account of the evidence is plausible when viewed in light of the entire record. (Emphasis added). *Id.* at 573-74; *In the Matter of Complaint of Luhr Bros., Inc.,* 157 F.3d 333, 338 (5th Cir. 1998), *cert. denied,* 526 U.S. 1050 (1999). **"When there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous."** (Emphasis added). *Anderson*, 470 U.S. at 573-574. It is respectfully submitted that given the abundance of evidence that Petitioner was transporting a heavy line when injured, the appellate court failed to accord the appropriate deference to the district court's findings and reversal was, therefore, improper. *Anderson*, 470 U.S. at

564; *In the Matter of Complaint of Luhr Bros., Inc.*, 157 F.3d at 337; Fed.R.Civ.P. 52(a).

The deference to be accorded the trial court's findings was clearly recognized in the dissent of Judge Dennis in this matter. The dissent correctly discerned that the evidence supports both versions of the connection of the emergency tow cable: "Both versions of the emergency tow connection procedure (with or without shock line) required McGuire and Menefield to manually pull a 'heavy line' across the deck." (Appendix A – p. 7). The dissent went on to state that: "Regardless of how the tow was reconnected, the record shows that McGuire injured his back on November 1, 1998, during the connection of the emergency tow line to the M/V ENSCO." (Appendix A – p. 8).

Since Petitioner claimed that he was dragging a heavy line with a J-hook across the deck to connect the emergency tow cable, and this description would be satisfied by a movement of the winch line, there is also an alternative foundation for the district court's finding. The winch cable would be very heavy and would require precisely the dragging effort Petitioner recounted in his trial testimony. Although Respondents admit the winch cable had to be transported in some fashion across the deck to the emergency tow cable in the shark jaws, Respondents have repeatedly failed to explain exactly how this task was accomplished.

A close reading of the district court's Findings of Fact shows unequivocally that the "shock line" was never declared by the district court not to be the heavy line Petitioner was pulling at the time he was injured. The district court simply indicated the shock line was not "rigged" in place on the vessel. Since the district court's

Findings of Fact show the presence of **a heavy line** that might have been the one actually pulled by Petitioner to connect the emergency tow cable, there is rational support for the district court's findings and they should have been affirmed. Since the winch cable itself plainly fits this description, there was no basis for any alteration of the judgment of the district court in this matter.

Further, the actual Ensco Employee Injury or Illness Report of November 2, 1998 (Appendix F) clearly states in its fourth section the following words:

> "The parties below affirm that they were witnesses to the above mentioned accident:
>
> (SIGNED):
>
> (1) Odell Saunders
> (2) James Shafer
> (3) Steve Yaun"
>
> These three witnesses were the highest ranking officers on the subject vessel.

In order to reverse and render on appeal, the Fifth Circuit had to find that reasonable minds could not differ on the facts of the accident, and that there was no satisfactory foundation for the finding of fact by the district court that Petitioner hurt his back pulling a heavy line or cable. If there *was* a factual basis in the record to support the opinion of the district court, reversal of that decision by the appellate court was impermissible under the clearly erroneous standard of review, unless the panel was left with a "definite and firm conviction a mistake has been committed." *Real Asset Management, Inc. v. Lloyds of London*, 61 F.3d 1223 (5th Cir. 1995).

In the district court's "Findings of Fact and Conclusions of Law" (Appendix C – paragraph 20), the district court noted as follows:

> "In his deposition, Plaintiff completed a sketch that showed the heavy line and the spot at which Plaintiff felt the pull or strain in his low back when he slipped. On November 2, 1998, an illness and injury report was completed in connection with plaintiff's accident. Captain Saunders, Captain Yaun and Engineer Shafer all signed the Illness and Injury Report, affirming that they were eyewitnesses to the accident related by Plaintiff. None of these eyewitnesses had any reason to doubt Plaintiff's testimony. Captain Yaun could not say that Plaintiff was the kind of individual who would perjury [sic] in order to try to get a monetary recovery. No witness can or did refute that Plaintiff slipped and fell to one knee on the back deck as he participated in efforts to connect the emergency tow cable. Defendant's witnesses who claimed not to have seen the slip or fall conceded that it was possible that this occurred and they simply did not see it."

The district court accepted Petitioner's account of the accident in large part because it was corroborated by the accident report signed by Saunders, Shafer and Yaun. The accident report and testimony of these three witnesses were acknowledged by the district court as the foundation of its finding as to the occurrence of the accident involving a line Petitioner was pulling. The accident report and testimony are reflected in the district court's Findings of Fact and Conclusions of Law (Appendix C).

In paragraphs 16 and 19 of the district court's Findings of Fact and Conclusions of Law (Appendix C), the district court observed:

> "Kenneth Jones, a deckhand on the back deck at the time of the manhandling of the heavy line, observed this operation being performed and turned at one point to see plaintiff grab his low back area. **Mr. Jones was "sure" in his testimony that plaintiff was pulling a heavy line with Donald Menefield.** (Emphasis added). This was the only time or occasion in the process of connecting the emergency tow cable that plaintiff noted any effect on his low back. Later that day, as plaintiff was showering after the emergency recovery of the barge had been completed, he began to experience pain in the same area of his low back where earlier, while pulling the heavy line, he had felt the pull or strain. Plaintiff timely reported his injury that evening."
>
> "Stephen Yaun saw Mr. Menefield working as a team on the back deck with Mr. McGuire. Shortly after the accident of November 1, 1998, **Deckhand Kenneth Jones gave a recorded statement to defendant's adjuster confirming his trial testimony, in particular his having seen plaintiff grabbing or holding his low back. Plaintiff has consistently told his treating physicians that he was injured pulling lines on the back deck during the process of connecting the emergency tow cable, and the Court believes plaintiff's version of this case."** (Emphasis added).

The district court specifically found the testimony of Menefield to be "not credible in refuting Plaintiff's allegations." (Appendix C – Findings of Fact, No. 18). The

district court also specifically found that it believed "Plaintiff's version of this case." (Appendix C – Findings of Fact, No. 19). Indeed, in the first paragraph of the district court's Findings of Fact and Conclusions of Law, the court stated that it was entering its findings "having considered all pleadings heretofore filed herein, the pre-trial order, together with substantial attachments, all post-trial submissions submitted by both parties and the applicable law, and having carefully considered all trial testimony and exhibits, **particularly including a number of live witnesses** (Emphasis added), and having considered the arguments of counsel." (Appendix C – p. 1).

Plaintiff's sworn testimony at trial was incorporated into the district court's "Findings of Fact and Conclusions of Law" at paragraph 15 (Appendix C) as follows:

> "Since this was an urgent, hurry up operation, plaintiff and Donald Menefield did not have time to rig the tuggers to assist in the movement of the heavy line but instead were ordered by Captain Saunders to move it manually with a J-hook. Moving the heavy line manually with a J-hook was necessitated by the hurry up situation at hand. During this manual maneuvering of the heavy line on the heavy, wet and slippery back deck of the M/V ENSCO ATLAS, plaintiff felt a strain or pull on his low back as the entire weight of the line was placed on him when, in the process of jerking on the heavy line, he slipped and fell to one knee. This was the only time during the entire operation that plaintiff felt such a pull or strain."

The lead case cited by Respondents on appeal in an attempt to argue that the factors cited by the district court as proximate causes of Petitioner's harm were not, in fact,

substantially related thereto, is irrelevant and should not have been relied upon by the appellate court. In *Chisholm v. Sabine Towing Transp. Co., Inc.*, 679 F.2d 60 (5th Cir. 1982), plaintiff's back was injured when he threw scrap metal overboard. Although the Fifth Circuit in that case agreed with the trial court that the failure to secure the scrap metal in the engine room was negligent, that negligence had nothing to do with plaintiff's injury when he deliberately lifted the scrap.

It strains credulity to see the resemblance between the fact pattern in *Chisholm* and the facts of this case. The risk in *Chisholm* was that someone might be hurt by unsecured scrap metal as it moved about the engine room. Failure to secure it had nothing to do with plaintiff's picking it up to discard it. In the case at bar, on the contrary, Respondents' failure to have essential equipment (chafing gear, control room key, non-skid paint) and procedures in place stood in *direct* causal relation to Petitioner's harm. The risk created by those failures was identical to that which resulted in harm to Petitioner. Had the M/V ENSCO ATLAS had sufficient non-skid paint on the deck, Petitioner would not have lost his footing and fallen. Non-skid paint is used precisely to prevent crew members from slipping while performing tasks in wet weather on deck. By not using the tugger to put the shock line into place as called for by the 1996 JSA, manual steps had to be substituted in order to attach the emergency tow cable. Petitioner was carrying out the very actions necessitated by the emergency created by the M/V ENSCO ATLAS's unseaworthy condition. *Chisholm* has no application here.

The Fifth Circuit's reliance on *Chisholm* to negate the district court's findings regarding the lack of chafing gear and the engineer's negligence in free spooling the entire

2500' length of towing cable by dismissing these findings of negligence and unseaworthy conditions as "remote but-for causes" (Appendix A) is misplaced. A case of more relevance is *Merlino v. United States Steel Corporation,* 1995 U.S. App. 6th Cir. *Lexis* 8101, in which the improper storage of a coiled rope combined with a lack of non-skid paint to produce plaintiff's harm. Whether in combination with the other causal factors or considered in isolation, the failure to maintain non-skid paint on the deck remains a sufficient proximate cause of Petitioner's accident. Even if none of the other acts of negligence or conditions of unseaworthiness counted, one proven allegation of unseaworthiness which causes harm to a crewmember is enough to establish Jones Act liability. *Sams v. Haines*, 299 F.Supp. 246 (Ga. 1969).

The dissent of Judge Dennis herein also challenges the majority's finding that the loss of the tow cable was merely a "remote but-for factor." Judge Dennis found, as Captain Saunders testified, that "if the engineer had not 'inadvertently hit the lever and released the clutch and we lost the cable, I see no reason for anybody to be out on the deck doing what we had to do.'" (Appendix A – p. 8). He further found that: "The defendant's negligence in allowing the tow to be lost was a substantial factor in bringing about the harm." (Appendix A – p. 8).

Finally, the appellate court's decision to reverse and render on all issues operated to, in effect, deny Petitioner his maintenance and cure, including substantial amounts for surgery. This denial is in clear controversion of the principles of maintenance and cure which are not fault-based and arise in conjunction with the employment contract. Since the appellate court found that Petitioner

was in fact injured in the course and scope of his employment as a seaman on Respondents' vessel, then maintenance and cure was plainly owed and the appellate court's removal of this item of damages by virtue of its reversing and rendering the entire judgment of the trial court was clearly erroneous and should be overturned by this Court. The amounts in question totaled $49,524.92 for past medical expenses (Appendix C – Findings of Fact, No. 34(i)) and $9,200.00 for past maintenance (Appendix C – Findings of Fact, No. 34(k)).

CONCLUSION

Petitioner, a seaman, was injured on November 1, 1998 by a series of negligent acts of the crew of the M/V ENSCO ATLAS, a vessel owned and operated by Respondents, and due to the unseaworthiness of said vessel as described herein. The appellate court, in a 2-1 decision, improperly substituted its own judgment for that of the trial court in reversing and rendering the trial court's judgment. In view of the clearly erroneous standard of review applicable to the appellate court's review of the trial court's Findings of Fact and Conclusions of Law, the appellate court's action was inappropriate in this matter. Further, the appellate court's actions deprived Petitioner of his right to maintenance and cure, a right independent of negligence-based concepts and owed by the Respondents without regard to either Jones Act negligence or unseaworthiness. Since the appellate court plainly agreed that Petitioner was injured while in the service of the M/V ENSCO ATLAS, this award should not have been disturbed and the appellate court should be reversed on this finding. Accordingly, Petitioner submits that a Writ of

Certiorari should be granted in this matter to allow these injustices to be corrected.

Respectfully Submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40552

CHADWICK STERLING MCGUIRE,

Plaintiff-Appellee,

versus

ENSCO INCORPORATED; ET AL.,

Defendants,

ENSCO MARINE COMPANY,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(USDC No. G-99-CV-380)

(Filed Jun. 20, 2002)

Before REAVLEY, SMITH and DENNIS, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The judgment of the district court is reversed for the following reasons.

1. While evidence points to harm suffered by McGuire to his back, and that it originated on November 1, 1998, aboard the M/V Ensco Atlas, McGuire failed to prove an injury caused by negligence of others or unseaworthiness of the ship.

2. The harm is unexplained. There is no substantial evidence of a particular injury. McGuire testified that he strained his back while pulling a shock line with a J-hook. The district court rejected the claim that a shock line was pulled but found that McGuire did pull a heavy line. There was no evidence that McGuire or anyone manually pulled a heavy line across the deck. The emergency tow cable was pulled to the winch from the jaws at the stern by the winch itself. Without evidence to support the court's finding, we must conclude that a mistake was made.

3. The district court attributed McGuire's injury to negligence that caused the loss of the tow cable (lack of chafing gear and release of the winch by the engineer). Those remote but-for causes of the work to reconnect the tow were not producing causes of injury to McGuire. As in *Chisholm v. Sabine Towing & Transp. Co.*, 679 F.2d 60 (5th Cir. 1982), where it was held that the loose metal – though proof of negligence and unseaworthiness – was not a substantial factor of plaintiff's injury in throwing the metal overboard, so here the loose tow was no more than remote but-for factor and not a producing cause of any subsequent injury aboard ship.

4. The district court also found the failure to make and log a job safety analysis to be negligence producing

McGuire's injury, but no evidence relates a failed plan to reconnect the tow to an injury to McGuire.

5. The district court also found that the lack of non-skid paint on the wooden deck and the worn metal surface constituted unseaworthiness producing McGuire's injury, but no evidence supports that finding. We are told by McGuire that other ships paint wooden decks with non-skid paint. Nothing more. Not what difference that made here. Not the condition of the deck where he said his foot slipped – except that it was wet. The difference in painting the deck is not itself proof of unseaworthiness, and it is not connected by proof to any harm to McGuire.

6. Therefore, for lack of proof of negligence or unseaworthiness attributed to defendant producing an injury to McGuire, we must reverse the judgment and render judgment for defendant.

REVERSED AND RENDERED.

DENNIS, Circuit Judge, dissenting.

Based upon a review of the record for clear error, I respectfully dissent for the following reasons.

First, the majority opinion states that "McGuire failed to prove an injury caused by negligence of others or unseaworthiness of the ship." I disagree. We have held that, "For a vessel to be found unseaworthy, the injured seaman must prove that the owner failed to provide a vessel, *including her equipment and crew,* which is reasonably fit

and safe for the purposes for which it is to be used."[1] The seaman must establish a causal connection between the injury and a breach of duty that rendered the vessel unseaworthy.[2]

The district court found that a series of negligent acts led to the plaintiff's injury: (1) There was no chafing gear; (2) Without chafing gear, the engineer had to periodically adjust the tow line manually; (3) The engineer accidentally released the tow line causing the entire tow line to fall into the sea; (4) The crew then had to attach an emergency tow line; and finally (5) McGuire was injured during the emergency tow line connection procedure. In my opinion, the record evidence supports the district court's finding that McGuire established a causal connection between his injury and a breach of duty that rendered the vessel unseaworthy.

Second, I do not believe that the record supports the statements: "There is no substantial evidence of a particular injury;" and "There was no evidence that McGuire or anyone manually pulled a heavy line across the deck. The emergency tow cable was pulled to the winch from the jaws at the stern by the winch itself."

The district court judge heard several different versions of how the emergency tow line was connected to the winch. However, the essential parts of the operation were undisputed. After the tow cable was lost, the crew met in the wheelhouse to discuss recovery of the tow. Captain

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[1] *Jackson v. OMI Corp.*, 245 F.3d 525 (5th Cir. 2001) (emphasis added).

[2] *Id.*

Saunders decided that he would operate the winch controls, Steve Yaun would pilot the boat, and McGuire was in charge on the back deck giving signals and would be manually involved in connecting the emergency tow line. Because they could not recover the original tow line, one of the crew members, Don Menefield, jumped over to the barge. He then released one end of the emergency tow line attached along the side of the barge. This allowed the loose end of the emergency tow line to go into the water. A buoy line was attached to the floating emergency tow line. Menefield jumped back onto the boat and joined other members of the crew on the back deck of the boat as they hooked the buoy line and pulled it onto the deck. The buoy line was pulled up with the air tugger and then secured into the port shark's jaws. They then pulled on the buoy line to bring the emergency tow line up out of the water and onto the deck. Once the tow line was on the deck, it was secured into the starboard shark's jaws. The shark's jaws are located about two feet from the stern. The video and sketches of the back deck of the boat indicate that the winch was at least 15 feet forward of the shark's jaws. When the tow line was secure in the shark's jaws, the crew connected a "50-ton" shackle to it.[3] The winch cable was either directly connected to the emergency tow line, or connected to the shock line which was in turn connected to the emergency tow line. The shark's jaws were released and the barge was towed to port by the cable and connecting line or lines. Everyone agreed that, between the loss of

[3] A 50-ton shackle is one capable of holding 50 tons. Its actual weight is somewhere between 75 and 90 pounds.

the towing cable and the connection of the emergency tow line, rain squalls dampened the back deck.

The witnesses disagreed about whether or not a shock line was used in connecting the emergency tow line. Captain Saunders, Don Menefield, and Steve Yaun testified that the winch cable was connected directly to the emergency tow line with a shackle. McGuire and Kenny Jones testified that a shock line was used between the winch cable and the emergency tow line, which would have required two shackles. Captain Saunders testified that he saw McGuire using a J-hook to move a shackle into position during the tow line connection. Jones, one of the seamen on board, testified that he saw McGuire grab his back as McGuire was using a J-hook to move a shock line during the rigging up of the emergency tow gear. McGuire told the judge that he didn't remember moving the shackle. He said that he and Don Menefield "dragg[ed] the eye of shock line to the cable that comes off the winch" and then hooked the shackle at both ends. Menefield, on cross-examination, acknowledged that in his deposition he had said that they used a J-hook to pull the emergency tow line onto the boat. He testified that a shackle was used to connect the emergency tow line to the boat's winch cable.

The district court's finding that McGuire and Menefield "proceeded to move a heavy line into position by using a J-hook to pull this line across the back deck of the vessel" is not clearly erroneous. No one denies that a J-hook was used during the emergency tow line connection. Captain Saunders said that he saw McGuire using a J-hook to move a shackle that day. The video shows two crew members using a J-hook to move a shock line before McGuire's accident occurred and Captain Saunders admitted that it was unsafe to do so. Both versions of the

emergency tow connection procedure (with or without shock line) required McGuire and Menefield to manually pull a "heavy line" across the deck: the heavy emergency tow line had to be placed into the shark's jaws before the connection to the shackle could be made. Once that connection was made, the heavy winch cable was moved down the deck and attached to a shackle. The winch cable, the shock line, and the emergency tow line were heavy lines because they were capable of handling the weight of the tow. The majority's statement that the emergency tow line was "pulled to the winch from the jaws at the stern by the winch itself" cannot be literally correct. Logic and the evidence show that a cable or a cable and a shock line were used to make the connection between the winch and the barge's emergency tow line. Regardless of how the tow was reconnected, the record shows that McGuire injured his back on November 1, 1998, during the connection of the emergency tow line to the M/V ENSCO.

Third, the loss of the tow cable was more than a remote but-for factor. As Captain Saunders explained during his testimony, if the engineer had not "inadvertently hit the lever and released the clutch and we lost the cable, I see no reason for anybody to be out on the deck doing what we had to do. We would have continued on with the tow because as far as the tow function went, the tow went good except for the rough weather with the hurricane." The defendant's negligence in allowing the tow to be lost was a substantial factor in bringing about the harm. As shown in the video and as is evident from the testimony at trial, a towing connection is ordinarily made at port in calm waters, not in the open sea. Without the loss of the towing cable, there was no reason for McGuire, a captain, to be on the boat's back deck, pulling on heavy

lines and shackles connecting a tow line in inclement weather.

In reviewing the results of an action tried without a jury, the district court's findings of fact "shall not be set aside unless clearly erroneous."[4] We must give due regard to the district court's opportunity to judge the witnesses' credibility.[5] It seems clear to me that the district court resolved the conflicting stories regarding how the tow was reconnected in favor of McGuire. Because the district court's findings of fact are not clearly erroneous in light of the record viewed in its entirety, I believe we should affirm. "Where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous."[6] For these reasons, I dissent.

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[4] Fed. R. Civ. P. 52(a).

[5] Fed. R. Civ. P. 52(a).

[6] *Tokio Marine & Fire Ins. Co., Ltd. v. FLORA MV*, 235 F.3d 963, 970 (5th Cir.2001) (citing *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

CHADWICK STERLING McGUIRE	§	CIVIL ACTION NO. G-99-380
V.	§	
ENSCO MARINE COMPANY	§	

FINAL JUDGMENT

For the reasons set out in the Court's Findings of Fact and Conclusions of Law this date entered herein, Plaintiff Chadwick Sterling McGuire shall have of and recover from Defendant Ensco Marine Company the total sum of $770,190.33, together with pre-judgment interest at the rate of 6% per annum, from the date of accident through today's date, together with post-judgment interest at the rate of 7% per annum, from this date until payment of Judgment, for which let execution issue if not timely paid.

ALL RELIEF NOT HEREIN EXPRESSLY PROVIDED IS DENIED.

THIS IS A FINAL JUDGMENT IT IS SO ORDERED.

DONE at Galveston, Texas this the 20th day of April, 2001.

/s/ Samuel B. Kent
SAMUEL B. KENT
UNITED STATES
DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

CHADWICK STERLING McGUIRE	§	CIVIL ACTION NO. G-99-380
V.	§	
ENSCO MARINE COMPANY	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A non-jury trial of this cause was held before this Court on September 20, 2000, and September 25, 2000, Honorable Samuel B. presiding. The Court, having considered all pleadings heretofore filed herein, the pre-trial order, together with substantial attachments, all post-trial submissions submitted by both parties and the applicable law, and having carefully considered all trial testimony and exhibits, particularly including a number of live witnesses, and having considered the arguments of counsel, hereby enters its Findings of Fact and Conclusions of Law, as provided in Rule 52 of the Fed.R.Civ.P.

I.

NATURE OF THE CASE

1. This is a Jones Act and general maritime law action brought by Chadwick Sterling McGuire, Captain of the M/V ENSCO ATLAS, against Defendant Ensco Marine Co. (hereinafter "Ensco"). Plaintiff filed this case alleging that as a result of Ensco's negligence and the unseaworthiness of the M/V ENSCO ATLAS, he sustained low back and neck injuries when he was pulling on a "shock" line as

part of connecting an emergency tow cable on November 1, 1998.[1] Defendants vigorously deny that Plaintiff was pulling on a shock line and deny that Plaintiff has suffered injury.

II.

FINDINGS OF FACT

1.

On November 1, 1998, the crew and officers of the M/V ENSCO ATLAS, including Plaintiff himself, were in the employ of Ensco and Ensco owned and operated the M/V ENSCO ATLAS. Both venue and jurisdiction are proper in this Court.

2.

Mr. McGuire is a 41 year old man from Pass Christian, Mississippi. Although he dropped out of high school, he eventually completed a G.E.D. He began going to sea in 1975 and obtained his Captain's license in 1978. Mr. McGuire has substantial wheelhouse experience aboard numerous sea-going vessels, but prior to his employment with Ensco he had limited experience as a tow captain aboard vessels such as the M/V ENSCO ATLAS.

3.

Mr. McGuire began his employment with Ensco in 1996. About one and a half months prior to the occurrence

[1] Defendant makes much in its defense about the fact that no shock line was rigged on the vessel. The Court agrees. But, Plaintiff was pulling on a line and was injured while doing so.

on which this suit is based, Mr. McGuire was on another Ensco vessel that sank. As a result of this incident he experienced a contusion to his back and a cut on his elbow requiring three stitches. Following this incident he saw a physician on only one occasion and was prescribed minimal anti-inflammatory medication. Mr. McGuire returned to work without restrictions as soon as his license and other official documents, lost in the sinking, could be replaced. He made no claim against Ensco as a result of that incident.

4.

As Relief Captain aboard the M/V ENSCO ATLAS, an offshore towing vessel, Mr. McGuire was primarily responsible for duties in the wheelhouse.

5.

At the time of the accident herein, the M/V ENSCO ATLAS was on the homeward leg of a voyage from Brownsville, Texas to Santa Marta, Columbia, with the offshore barge, Boa # 8, in tow. The Master was Mr. Ordell J. Saunders. An additional Relief Captain, Mr. Steven Yaun, was also on the vessel at the time of the accident.

6.

The Defendant's first in a series of acts of negligence that culminated in Plaintiff's injury on the back deck of the M/V ENSCO ATLAS was Defendant's failure to provide Captain Saunders with the chafing gear he requested. Prior to the commencement of the voyage, Captain Saunders had discussed the need for chafing gear with his first and second mate who both asked him if this gear was available. Defendant's Operations Manager denied Captain Saunders' request for chafing gear. If chafing gear had

been made available, it would have been used instead of having to play the towing cable in and out. Had chafing gear been used on the vessel, there would have been no need to adjust the cable length. Without the use of chafing gear, the engineer was forced to pick up and let out 2'-4' of the 2500' tow cable from time to time to reduce wear on the cable. Failure to have such gear onboard constituted negligence. Such negligence proximately led to Plaintiff's injuries.

7.

During this exercise, the vessel's Engineer, James Shafer, inadvertently but negligently grabbed the wrong lever, causing the drum to start freewheeling with the result that the entire 2500' of steel main tow cable went over the stern of the vessel and into the sea. Without the towing cable attached, the barge drifted out of control in 3'-4' seas and 6'-8' swells with intermittent rainstorms. Such negligence proximately led to Plaintiff's injuries..

8.

Due to the loss of the barge and the towing cable, Captain Saunders ordered every able-bodied seaman on deck to assist in retrieving the barge. Plaintiff was off watch at this time, but due to the emergency situation, he was called back to work.

9.

Prior to performing any task that might be considered dangerous, Defendant's policy required that a Job Safety Analysis (JSA) be performed and logged. The JSA required a consideration and listing of all action to be taken to perform the required task and the sequence of each step to be taken as well as an identification of any risk or danger

and the ways to prevent such exposure. In spite of the importance of the JSA coupled with the importance of his position and example, Captain Saunders failed to log the meeting he alleges was a JSA prior to commencing the emergency tow cable operation. Rather than a JSA meeting, the gathering in the wheelhouse on November 1, 1998 was a brief, impromptu gathering of the crew getting orders from Captain Saunders of the action he wanted the crew to take. Failure to have a valid JSA constituted negligence, which proximately caused Plaintiff's injuries.

10.

A previous JSA authored by Captain Saunders on October 1, 1996, as the employee with the highest level of authority and the most responsibility on the vessel on the day of the accident, stated that a shock line was to be used in connecting a towing cable.

11.

Initially, attempts were made to pull up the tow cable by having Plaintiff, Deckhand Donald Menefield and Captain Saunders jump from the vessel to the drifting barge to try to get into the control room on the barge. However, the attempt to use the winch in the barge's control room was futile because the control room was locked and no one with the M/V ENSCO ATLAS had a key.

12.

While in communication with defendant's operations department, Captain Saunders attempted on numerous occasions to snag or otherwise retrieve the lost towing cable beneath the barge, but was unable to do so. Finally, as time was running short to retrieve the barge before night fall, [sic] the order was given by Captain Saunders

to secure the emergency tow cable on the barge to the second spool of wire on the winch of the vessel. The back deck of the vessel was wet and slippery while Plaintiff and others hurried on deck to try and rig the emergency tow cable. The wooden portion of the back deck had no non-skid paint on it. During the voyage, the movement of the main tow cable had rubbed off areas of the nonskid paint on the metal surface of this deck. This constituted an unseaworthy condition which proximately caused Plaintiff's injuries.

13.

At the time of the incident involved herein, the M/V ENSCO ATLAS was equipped with heavy lines, which Defendant's JSA provides are to be used in connecting towing cable. Consistent with this JSA, Plaintiff and Donald Menefield proceeded to move a heavy line into position by using a J-hook to pull this line across the back deck of the vessel. Captain Saunders was at the winch controls during this activity, serving as the safety observer and barking orders over the PA system.

14.

Captain Yaun was at the stern controls of the vessel while the emergency tow cable was being connected. Captain Saunders admitted that it was unsafe to manhandle the heavy line with the J-hook as opposed to pulling it with the vessel's tugger. Nonetheless, as shown in the video of this voyage, Captain Saunders had on an earlier date in this same voyage observed other crewmen pulling the heavy line across the deck with a J-hook and made no effort to correct them. Such inconsistent conduct constitutes negligence, which proximately caused Plaintiff's injuries.

15.

Since this was an urgent, hurry up operation, Plaintiff and Donald Menefield did not have time to rig the tuggers to assist in the movement of the heavy line but instead were ordered by Captain Saunders to move it manually with a J-hook. Moving the heavy line manually with a J-hook was necessitated by the hurry up situation at hand. During this manual maneuvering of the heavy line on the heavy, wet and slippery back deck of the M/V ENSCO ATLAS, Plaintiff felt a strain or pull on his low back as the entire weight of the line was placed on him when, in the process of jerking on the heavy line, he slipped and fell to one knee. This was the only time during the entire operation that Plaintiff felt such a pull or strain.

16.

Kenneth Jones, a deckhand on the back deck at the time of this manhandling of the heavy line, observed this operation being performed and turned at one point to see Plaintiff grab his low back area. Mr. Jones was "sure" in his testimony that Plaintiff was pulling a heavy line with Donald Menefield. This was the only time or occasion in the process of connecting the emergency tow cable that Plaintiff noted any effect on his low back. Later that day, as Plaintiff was showering after the emergency recovery of the barge had been completed, he began to experience pain in the same area of his low back where earlier, while pulling the heavy line, he had felt the pull or strain. Plaintiff timely reported his injury that evening.

17.

Defendant's witnesses testified that they had no reason to doubt Plaintiff's version of the accident and they did not believe he was the kind of individual who would

commit perjury. Captain Yaun testified that it was possible for someone on the stern deck to have slipped during the operation and not be seen having done so.

18.

Donald Menefield, in contrast to all other witnesses in this case, testified that the seas were CALM and the skies were clear while he was working on the stern deck. Mr. Menefield, in claiming he never saw Sterling McGuire slip or fall on the stern deck, testified as to pulling some "line" on the deck with a J-hook but he could not remember which one. He confirmed that they possibly may have been using a J-hook in the efforts to connect the emergency tow line. Unlike Captain Saunders and other defense witnesses, he denied there was any water on the back deck and finally admitted that "I don't remember one way or the other" if Sterling McGuire fell. He claimed he did not even know where Plaintiff was. His testimony is not credible in refuting Plaintiff's allegations.

19.

Stephen Yaun saw Mr. Menefield working as a team on the back deck with Mr. McGuire. Shortly after the accident of November 1, 1998, Deckhand Kenneth Jones gave a recorded statement to Defendant's adjuster confirming his trial testimony, in particular his having seen Plaintiff grabbing or holding his low back. Plaintiff has consistently told his treating physicians that he was injured pulling lines on the back deck during the process of connecting the emergency tow cable, and the Court believes Plaintiff's version of this case.

20.

In his deposition, Plaintiff completed a sketch that showed the heavy line and the spot at which Plaintiff felt the pull or strain in his low back when he slipped. On November 2, 1998, an Illness and Injury Report was completed in connection with Plaintiff's accident. Captain Saunders, Captain Yaun and Engineer Shafer all signed the Illness and Injury Report, affirming that they were eyewitnesses to the accident related by Plaintiff. None of these eyewitnesses had any reason to doubt Plaintiff's testimony. Captain Yaun could not say that Plaintiff was the kind of individual who would perjury [sic] in order to try to get a monetary recovery. No witness can or did refute that Plaintiff slipped and fell to one knee on the back deck as he participated in efforts to connect the emergency tow cable. Defendant's witnesses who claimed not to have seen the slip or fall conceded that it was possible that this occurred and they simply did not see it.

21.

Following his injury on November 1, 1998, during the voyage to Brownsville, Texas, Plaintiff initially underwent medical treatment by Dr. Charles Winters in Biloxi, Mississippi on November 20, 1998, at which time Plaintiff told Dr. Winters he had injured his back on November 1, 1998, while pulling towlines on the M/V ENSCO ATLAS. A lumbar MRI done on December 1, 1998 revealed mild disc space narrowing, with associated disc desiccation at L1-2 and L2-3.Dr. Winters continued to treat Plaintiff through April 21, 1999, during which period of treatment Dr. Winters concluded that Plaintiff had a lumbar sprain caused by the incident of November 1, 1998. Dr. Winters was of the opinion that Plaintiff had a 5% permanent partial impairment to his back associated with this strain

which will cause Plaintiff to experience intermittent back problems throughout the remainder of his life. As of April 21, 1999, Dr. Winters felt that Plaintiff could perform light duty work with permanent restrictions against lifting, pushing or pulling greater than 10-15 pounds.

22.

Dr. Joe Jackson, a Board certified neurologist, examined Plaintiff on May 11, 1999, on referral from Dr. Winters. Plaintiff reported to Dr. Jackson that he was injured on November 1, 1998, when he was slipping and sliding on the back deck of the M/V ENSCO ATLAS, as he pulled towlines. On examination, Dr. Jackson noted muscle tightness at the L2, L4 and L5 levels. Dr. Jackson was of the professional opinion that Plaintiff suffered at least a ligamentous strain/sprain-type injury to his low back with associated trigger points as a result of the accident of November 1, 1998. Dr. Jackson described trigger points as areas of hard muscle mass, associated with muscle spasm over time. He related these trigger points to the accident of November 1, 1998. Plaintiff's trigger points were injected by Dr. Jackson on June 11, 1999 and again on June 22, 1999. Dr. Jackson felt that a discogram would be a useful diagnostic tool in diagnosing lumbosacral problems causing pain in Plaintiff's low back that might not appear on an MRI.

23.

Dr. Bruce Weiner, the Defendant's IME doctor, saw Plaintiff only once on February 25, 2000, at which Plaintiff complained of low back pain. Dr. Weiner found no spasms or list or trigger points on physical examination and diagnosed Plaintiff with a strain of his low back, notwithstanding that x-rays done by Plaintiff's prior physicians

did show a minimal list. He testified that his review of Plaintiff's lumbar MRI showed only mild degeneration. However, none of Plaintiff's prior diagnostic testing showed any significant degenerative changes at the L5-S1 level. He further admitted that the discogram done in May, 2000 showed abnormalities at L5-S1 but he discounted the findings of this diagnostic test and did not consider them in reaching his conclusion that surgery was not warranted.

24.

Plaintiff's EMG, performed on September 14, 1999, showed a left S-1 radiculopathy, which is at the L5-S1 disk. Dr. Weiner felt that as of approximately April 1999, Plaintiff would have reached maximum medical improvement and that, contrary to Dr. Winters, Dr. Jackson, and Dr. Cupic, he would have been able to resume work with no restrictions as to lifting, pushing or pulling.

25.

Dr. Zoran Cupic is Plaintiff's treating physician and has often been recognized by the Court as an expert under Fed.R.Evid. 702. Dr. Cupic first saw Plaintiff on June 25, 1999. Dr. Cupic is of the opinion that Plaintiff suffered from a herniated disc at L5-S1 which, in all reasonable medical probability, was caused by his pulling on a 6-inch line in rough water. Plaintiff had objective evidence of injury in the form of spasm in his lumbosacral area, a markedly reduced range of motion in his low back, a positive straight leg raising test and an abnormal lumbar MRI at L1-2 and L2-3. Dr. Cupic ordered an EMG and a discogram, the former of which showed radiculopathy at S1 nerve root level on the left side. The discogram was

positive as well at the L5-S1 level, confirming the presence of a herniated disc.

26.

A laminectomy and disk incision with a fusion was performed by Dr. Cupic on June 15, 2000. While Plaintiff has improved post-surgery, he is still in a back brace and will have to continue with this brace for 5-6 months after surgery. Plaintiff will not be in a condition to be evaluated for any form of work until a minimum of one year from June, 2000. Dr. Cupic is of the opinion, to a reasonable medical probability, that Plaintiff will have some degree of pain for the rest of his life as a result of the low back injury he suffered on November 1, 1998 and that he will have permanent physical limitations against lifting in excess of 15-20 pounds, climbing, excessive bending, stooping, squatting, prolonged standing and working on uneven surfaces, which limitations will permanently restrict Plaintiff from ever returning to work aboard any type of vessel at sea. Plaintiff will be limited to sedentary or light work that does not jar on put stress on Plaintiff's back.

27.

Plaintiff's future medical treatment over the next 30 years in connection with his low back will, in Dr. Cupic's opinion, be approximately $1000 per year. Plaintiff's unpaid or past due medical cure is as follows:

Dr. Zoran Cupic	$28,623.00(Plaintiff's Ex. 24)
Diagnostic Management Affiliates	2,528.00(Plaintiff's Ex. 47)
Eckerd Drugs	205.66(Plaintiff's Ex. 49)
Dr. Hosni Bassili	1,746.00(Plaintiff's Ex. 50)
Memorial Pathology	80.71(Plaintiff's Ex. 51)
Med. Arts Pharmacy	2,013.45(Plaintiff's Ex. 52)
La. Clinic	3,313.27(Plaintiff's Ex. 53)
Cardiovascular Diagnostics	40.00(Plaintiff's Ex. 54)
Hospital Drug Store	36.13(Plaintiff's Ex. 55)
Memorial Hermann Hospital System	10,938.70(Plaintiff's Ex. 56)
	$49,524.92

In Dr. Cupic's opinion, these bills reflect necessary treatment and reasonable expenses as a result of the injury of November 1, 1998.

28.

Prior to the injury of November 1, 1998, Plaintiff was working at full duty without any complaints or limitation relative to his low back. Based upon its evaluation of all of the testimony and other evidence in the case, this Court finds that the Plaintiff was injured in the course and scope of his employment on November 1, 1998.

29.

The Court recognized, without objection from Defendant, Dr. Kenneth G. McCoin, as an expert in evaluation of economic loss pursuant to Fed.R.Evid. 702. According to the testimony of Dr. McCoin, Plaintiff had a work life expectancy of 20.6 years and a life expectancy of 34.6 years at the date of trial, based upon the Work Life and Life Expectancy tables of the United States.

30.

Plaintiff had base annual earnings of $72,900 as of the date of the accident based on a pay rate of $300 a day and 243 work days per year. The daily rate being paid by Ensco is currently $325 a day. To calculate future losses, Dr. McCoin used a below-market discount rate of one and one-half percent, in compliance with the appropriate standards enunciated in *Culver II* and its progeny. Dr. McCoin opined that Plaintiff has sustained past lost wages of $99,558.00 and $1,105.00 in loss of household services as of the date of trial. Dr. McCoin also testified that Plaintiff will sustain a future loss of wage earning capacity in the sum of $1,031,611, assuming Plaintiff begins working on January 1, 2003 at a $12.50 per hour job, which the Court finds substantially persuasive. Finally, Dr. McCoin stated Plaintiff will sustain future losses of $29,225 in household services.

31.

Defendant retained Dr. James Yeager as its economist. Dr. Yeager based his opinions about Plaintiff's earning capacity on Plaintiff's 1997 earnings "inflation adjusted to 1998," instead of using Plaintiff's actual 1998 wages. In fact, Dr. Yeager's flawed methodology projected an income figure for the Plaintiff's 1998 earnings that are even

below what Plaintiff actually earned through the middle of November of that year. Dr. Yeager does not provide a sufficient basis for reducing Plaintiff's earnings by his so-called "age-earnings" analysis. Dr. Yeager was not even aware of Plaintiff's daily wages at the time of the accident or what changes there have been to Ensco Captain and Relief Captain's wages since November 1, 1998. In short, this Court does not find Dr. Yeager's testimony or economic analysis either reliable or persuasive.

32.

The Court recognized William Kramberg, Plaintiff's vocational rehabilitation specialist, as an expert in evaluation of rehabilitation pursuant to Fed.R.Evid. 702. Based upon the testimony of Mr. Kramberg, and based on the evidence before the Court, Plaintiff will be, after his release by Dr. Cupic, limited to sedentary to light duty jobs in the $10.50 – $10.75 hour. With 2 1/2-3 years of retraining, Plaintiff might expect to find employment in the $10-$15 hour range (with an average of $12.50 per hour). The cost of this training over 2 1/2-3 years will be $8,000. Plaintiff is permanently restricted from work aboard any vessels. The Defendant's vocational rehabilitation specialist, Willie Quintanilla, testified that the position of Relief Captain is at least a medium level job requiring occasional lifting of 50 pounds and repetitive lifting of 25 pounds. Mr. Quintanilla agreed that Plaintiff cannot go back to work on boats and that, based on Dr. Cupic's testimony, he can only do sedentary work.

33.

The parties stipulated that maintenance was terminated on February 25, 2000.

34.

Based upon the totality of evidence in this case, the Court finds and concludes that the Plaintiff has sustained the following losses by a preponderance of the evidence:

a. for the physical pain, mental anguish, and suffering sustained by Chadwick Sterling McGuire from the date of his injuries on November 1, 1998 and through the date of trial, the amount of $125,000.00;

b. For the physical pain, mental anguish, and suffering sustained by Chadwick Sterling McGuire from the date of trial until the end of his life expectancy of 34.6 years, the amount of $125,000.00;

c. For permanent physical impairment from November 1, 1998 until the date of trial, the amount of $10,000.00;

d. For permanent physical impairment from the date of trial until the end of Plaintiff's life expectancy of 34.6 years, the amount of $10,000.00;

e. For loss of wages in the past from the date of the incident until the date of trial, the sum of $99,558.00;

f. For loss of past household services from the date of the incident until the date of trial, the sum of $1,105.00;

g. For future loss of wage earning capacity and the cost of re-training, the sum of $500,000.00;

h. For future loss of household services the sum of $7,500.00;

i. For the reasonable and necessary cost of past medical care, the sum of $49,524.92;

j. For the reasonably probable cost of medical care in the future and until the end of Plaintiff's life expectancy of 34.6 years, at $1,000.00 per year, the sum of $34,600.00;

k. The Court finds maintenance was terminated on February 25, 2000 a date before the Plaintiff had reached maximum medical improvement. The Plaintiff will reach maximum medical improvement on June 1, 2001. The Court further finds that the sum of $20.00 a day was previously paid by Defendant and such sum is reasonable under the facts of this case. The Court awards the Plaintiff the sum of $20.00 a day for a total of 460 days in the amount of $9,200.00.

l. The Court finds that an award of prejudgment interest is proper in this case. Accordingly, the Court finds and awards prejudgment interest on all damages accrued through the entry of Judgment, to run at the prevailing rate of interest as prescribed in 28 U.S.C. § 1961.

35.

The Court finds Defendant 80% liable for the foregoing damages and Plaintiff 20% liable therefore.

CONCLUSIONS OF LAW

1.

This is a case of admiralty and maritime jurisdiction.

2.

At the time of his injury on November 1, 1998, the Court concludes that Plaintiff Chadwick Sterling McGuire was a "seaman" as that term is legally defined under the Jones Act, and was employed by Defendant Ensco Marine Co.

3.

The injuries sustained by Plaintiff McGuire were proximately caused 80% by the foregoing negligence of Defendant Ensco Marine Co., and/or in failing to provide a safe place to work and the consequent unseaworthiness of the M/V ENSCO ATLAS. Defendant Ensco is the legal owner of the M/V ENSCO ATLAS. The negligence and unseaworthiness were each and both a legal and proximate cause of Plaintiff's injuries. The Court finds Plaintiff 20% legally responsible for his own injuries.

4.

To the extent any Finding of Fact constitutes a Conclusion of Law, the Court hereby adopts it as such. To the extent any Conclusion of Law constitutes a Finding of Fact, the Court hereby adopts it as such.

5.

Plaintiff is entitled to pre-judgment interest from the date of loss at a rate of 6.0%, and post-judgment interest at the rate of 7.0% per annum until satisfaction of Judgment.

DONE at Galveston, Texas this the 20th day of April, 2001.

/s/ Samuel B. Kent
SAMUEL B. KENT
UNITED STATES
DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40552

CHADWICK STERLING MCGUIRE

Plaintiff-Appellee

v.

ENSCO INCORPORATED; ET AL

Defendants

ENSCO MARINE COMPANY

Defendant-Appellant

Appeal from the United States District Court for the
Southern District of Texas, Galveston

ON PETITION FOR REHEARING EN BANC

(Filed Jul. 20, 2002)

(Opinion 6/20/02, 5 Cir., ___, ___ F.3d ___)

Before REAVLEY, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P.

and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

[Judge Dennis would grant rehearing by the panel for the reasons stated in his dissent]

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The Court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (FED. R. APP. P and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Thomas M. Reavley
United States Circuit Judge

APPENDIX E

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

CHADWICK STERLING McGUIRE

VERSUS

ENSCO, INC., ENSCO OFFSHORE COMPANY AND ENSCO INTERNATIONAL INCORPORATED

C. A. # G-99-380

Pursuant to Rule 9(h) of The Federal Rules of Civil Procedure ADMIRALTY

PLAINTIFF'S ORIGINAL COMPLAINT

(Filed Jun. 29, 1999)

NOW COMES Chadwick Sterling McGuire, hereinafter referred to as Plaintiff, complaining of ENSCO INCORPORATED, ENSCO OFFSHORE COMPANY, and ENSCO INTERNATIONAL INCORPORATED (hereinafter "ENSCO"), and for cause of action, would respectfully show unto this Honorable Court the following:

1.

Plaintiff, Chadwick Sterling McGuire, is a resident of the State of Mississippi.

2.

Defendant ENSCO Incorporated is a Texas corporation authorized to do and doing business in the State of Texas at 2700 Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202.

3.

Service of Summons and Complaint may be made upon defendant, ENSCO Incorporated, through its registered agent for service of process, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

4.

Defendant, ENSCO Offshore Company is a Delaware Corporation authorized to do and doing business in the State of Texas at 363 N. Sam Houston Parkway East, Suite 1100, Houston, Texas 77060.

5.

Service of Summons and Complaint may be made upon defendant ENSCO Offshore Company, through its registered agent for service of process, CT Corporation Systems, 350 North St. Paul Street, Dallas, Texas 75201.

6.

Defendant, ENSCO International Incorporated, is a Delaware Corporation, authorized to do and doing business in the State of Texas.

7.

Service of Summons and Complaint may be made upon defendant ENSCO International Incorporated, through its registered agent for service of process, CT Corporation Systems, 350 North St. Paul Street, Dallas, Texas 75201.

8.

Jurisdiction in this case is founded solely on the basis of Title 28 U.S.C., Section 1333 and this is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears. This is an admiralty or maritime claim within the meaning of Rule 9(h).

9.

Venue is proper in this matter pursuant to the Admiralty and Maritime Laws of the United States, in that defendants ENSCO Incorporated, ENSCO Offshore Company, and ENSCO International Incorporated are corporations doing business in the Southern District of Texas.

10.

Plaintiff is an American citizen and brings this action pursuant to Title 46 U.S.C., Section 688 and pursuant to the Admiralty and General Maritime Law of the United States. As such, pursuant to Title 28 U.S.C. Section 1916, plaintiff brings this action without the necessity of prepayment of costs, fees or the necessity of furnishing security therefor.

11.

At all times material hereto, ENSCO was the owner and/or operator of a towing vessel, the M/V ATLAS. The M/V ATLAS is a U.S. flag vessel of 269 gross registered tons, with its home port in New Orleans, Louisiana.

12.

On or about November 1, 1998, plaintiff was employed as a relief captain by ENSCO and assigned to the crew of the M/V ATLAS.

13.

On or about November 1, 1998, the towing cable for the M/V ATLAS was lost overboard casting adrift the tow of the M/V ATLAS, Boa Barge #8.

14.

While attempting to connect the emergency tow cable, plaintiff suffered an accident severely injuring his lower back.

15.

As a result of the accident of November 1, 1998, plaintiff sustained severe, permanent and disabling injuries, including injuries to his lower spine. Said injuries were caused in whole or in part by the negligence of the defendants, their agents, servants and/or employees as follows:

a. Failing to provide plaintiff with a safe place to work;

b. Failing to properly supervise the work operation;

c. Failing to provide appropriate equipment to perform the job in a reasonably safe manner;

d. Requiring the plaintiff to work while off watch;

e. Negligently allowing the towing cable of the M/V ATLAS to spool out and fall overboard, casting the tow adrift; and

f. Other acts of negligence which will be proven at trial.

16.

A proximate cause of this accident was the unseaworthiness of the towing vessel, the M/V ATLAS.

17.

By reason of the occurrence made the basis of this action, including the conduct on the part of defendants, plaintiff sustained severe bodily injuries, resulting in physical pain and mental anguish, and, in reasonable medical probability, will continue to do so for the balance of his natural life.

18.

As a result of the foregoing injuries, the plaintiff has suffered a loss of wages in the past and a loss of or reduction in his capacity to work and earn money in the future, and, in reasonable probability, his earning capacity has been impaired permanently.

19.

Additionally, plaintiff has incurred reasonable and necessary medical expenses in the past and in reasonable probability, will incur reasonable medical expenses in the future.

20.

Additionally, as a result of the injuries sustained in the occurrence of November 1, 1998, plaintiff has suffered in the past, and will, in reasonable medical probability, continue to suffer permanent physical and psychological impairment.

21.

Pleading further, in the alternative, if it be shown that plaintiff was suffering from some pre-existing injury, disease and/or condition, then such was aggravated and/or exacerbated as a proximate result of the occurrence made the basis of this lawsuit.

22.

Plaintiff would show that on the above-mentioned date, he was injured while in the service of the M/V ATLAS. As a result, defendants ENSCO have and continue to have, a non-delegable duty to provide the plaintiff with the benefits of maintenance and cure. Plaintiff would show that he has not reached maximum medical improvement and the defendant's duty continues. Defendants ENSCO have denied payment of maintenance and cure and are now sued for all benefits of maintenance and cure to which plaintiff is legally entitled.

WHEREFORE, premises considered, plaintiff, Chadwick Sterling McGuire prays for judgment against defendants, ENSCO Incorporated, ENSCO Offshore Company and ENSCO International Incorporated in the amount of EIGHT HUNDRED THOUSAND ($800,000.00) DOLLARS AND 00/100, plus pre- and post-judgment

interest at the legal rate, for all costs of court, and all such other and further relief, at law and in equity, to which they may be justly entitled.

Respectfully submitted:

MELANCON & HOGUE, L.L.P.

BY: Richard L. Melancon
RICHARD L. MELANCON
(13913775)
MICHAEL W. HOGUE
(09809800)
316 E. Parkwood Avenue
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(281) 992-5394
(281) 992-5392 (Fax)

AND

RANDY J. UNGAR (12387)
PAUL N. VANCE (13007)
UNGAR, BYRNE & VANCE
365 Canal Street, Suite 2030
New Orleans, La. 70130
(504) 566-1616
(504) 566-1652 (Fax)

ATTORNEYS FOR PLAINTIFF

PLEASE SERVE:

ENSCO INCORPORATED
Through its agent for service of process
CT CORPORATION SYSTEM
350 North St. Paul Street
Dallas, Texas 75201

ENSCO OFFSHORE COMPANY
Through its agent for service of process
CT CORPORATION SYSTEM
350 North St. Paul Street
Dallas, Texas 75201

ENSCO INTERNATIONAL INCORPORATED
Through its agent for service of process
CT CORPORATION SYSTEM
350 North St. Paul Street
Dallas, Texas 75201

APPENDIX F

ENSCO

EMPLOYEE INJURY OR ILLNESS REPORT

_____ LOST TIME/FATALITY _____ MEDICAL X RECORD ONLY _____ THIRD PARTY

_____ RESTRICTED DUTY _____ FIRST AID _____ ILLNESS (WORK RELATED)

DATE OF THIS REPORT: 11-02-98

INJURED PERSON

Injured's Name: STERLING McGuire Date of Birth: 5/19/58
Injured's Address: 1080 RR 366
City: PASS CHRISTIAN State: MS Zip: 39571
Social Security No.: 587-62-3735 Phone No.: (228) 255-9224
Job Classification: MASTER I Employer: ENSCO MARINE
Length of Service With Company: 2 YRS In Present Position: MASTER
Length of Service on this Rig/Vessel: 8 MONTHS

TIME AND PLACE

Date of Injury: 11-01-98 Day of Week: SUN Time: 11:30 am ✓ pm
Date Injury was Reported: 11-01-98 11:45 By Whom: [illegible] S. McGuire
Location of Accident: ENROUTE to BROWNSVILLE FROM SANTA MARTA CHAMBLIN

DESCRIPTION OF HOW INJURY/ILLNESS OCCURRED (ATTACH ADDITIONAL SHEETS IF NECESSARY)

This Section to be Completed and Signed by Person Claiming Injury/Illness.
Describe How Injury/Illness Occurred: WHILE CONNECTING EMERGENCY TOW CABLE STRAINED OR PULLED SOMETHING IN LOWER SPINE
Part of Body Injured: LOWER SPINE
Describe Injury: STEADY PAIN IN LOWER SPINE
I hereby agree that the accident description and extent of my injury as described above are true and correct. [signature] Injured Employee Signature Date:

WITNESSES

The parties listed below affirm that they were witness to the above mentioned accident:

	Print Name	Address	City	State	Phone#
1.	O.J. Sauls	105-T	Morgan	LA	1-7378463
2.	[illegible]	401	Twin Oaks	Portland	503-3725
3.	Steve Sauls	417	Magnolia	AL	n/a

INVESTIGATIVE COMMENTS BY TOOLPUSHER/ CAPTAIN (OPTIONAL)

RIG/VESSEL INFORMATION

Rig/Vessel: ENSCO ATLAS Location (at Time of Accident): ENROUTE
Dock: N/A Operator: STEVE SAUNS
No. of Persons on Board: 2 Next Crew Change Date: 11-11-98
Toolpusher/Captain (at Time of Accident): O.J. Sauls
Address: 417 MAGNOLIA DR City: CAPE SHORES
State: AL Zip: 36542 Phone #: (850) 271-7373
Immediate Supervisor: R. Hoover Title: OIM Mang.

WEATHER CONDITIONS

Prevailing Conditions: Sea 3-4' SCD - 6-8' SWELL
Current Speed and Direction: N/A
Temperature: ____ °F Wind Speed and Direction: NE'LY - 6-8 KNOTS
Weather Conditions: Clear ✓ Rain ✓ Fog ____ Other
Visibility: Good ✓ Fair ____ Poor ____ Distance of Vision in Miles 6-8 MILES

MEDICAL

Hospital/Doctor: N/A Address:
City: State: Phone # ( )

SIGNATURES

[signature] Person Making Out This Report (Signature)
[signature] Toolpusher/Captain (Signature)

NOTE: 1) A COPY OF THIS REPORT IS TO BE FAXED TO THE DIVISION/DISTRICT OFFICE BY 8:00 A.M. THE NEXT DAY!
2) THE ORIGINAL AND DIVISION/DISTRICT COPIES ARE TO BE SENT TO THE DIVISION/DISTRICT OFFICE AS SOON AS POSSIBLE

DOCUMENT NUMBER: FM-I A-SA-001

ENSCO 0008

McGuire

ORIGINAL DALLAS OFFICE COPY

DEFENDANT'S EXHIBIT

BEST AVAILABLE COPY